IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.480/2002

United India Insurance Company Limited
...defendant-appellant
Versus
Radha Kirshna S/o Shri Bhuramalji Khandelwal & Another
...plaintiff-respondents

Date of Order ::: 29.11.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri R.P. Agrawal, Counsel for defendant-appellant
Shri D.D. Patodiya, Counsel for plaintiff-respondents
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By the Court:-

Heard learned counsel for the parties.

The plaintiff-respondents filed a suit for eviction in respect of the rented property against the defendant-appellant in the lower court, which was decreed on the ground of default in making the payment of monthly rent as well as non-user of the rented property. The judgment and decree passed by the lower court has been affirmed by the first appellate court.

It is relevant to mention that during the pendency of the suit, the defendant committed default as he failed to deposit the monthly rent during the pendency of the suit, and an application in this regard was filed by the plaintiff under Section 13 (5) of the Rajasthan Premises (Control of Rent & Eviction)

Act, 1950 (for short, 'the Act') for striking down the defence of the defendant. However, the application of the plaintiff was dismissed by the lower court but the said order was set aside by the first appellate court. The defendant challenged the order of the first appellate court before this court, which was upheld in S.B. Civil Revision Petition No.1902/1997, vide order dated 8.10.1998. The application under Section 13 (5) of the Act filed by the plaintiff was ultimately allowed and the defence of the defendant was strike off, therefore, the benefit of sub-section (6) of Section 13 of the Act was not given to the defendant and the decree of eviction was passed on the ground of default also.

I have heard learned counsel for both the parties and after considering their submissions I find that the question of non-user of the rented property, in the facts and circumstances of the present case, is purely a question of fact and there is concurrent finding of fact by both the courts below. 'Non-user' of the property, in question, is one of the ground of eviction under Section 13 of the Act, 1950. The concurrent finding of fact recorded by both the courts below cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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